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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1970

No. 409

THE BOARD OF EDUCATION OF THE LITTLE ROCK SCHOOL DISTRICT, et al.,
Petitioners,

vs.

DOLORES CLARK, et al.,
Respondents.

PETITION FOR A WRIT OF CERTIORARI

To the United States Court of Appeals
for the Eighth Circuit and

MOTION TO ADVANCE

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No. .....

THE BOARD OF EDUCATION OF THE LITTLE ROCK SCHOOL DISTRICT, et al.,
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MOTION TO ADVANCE

Petitioners respectfully move that the Court advance its consideration and disposition of this case. It presents issues of national importance which require prompt resolution by this Court for the reasons stated in the annexed petition for a writ of certiorari. The public school systems of the nation face conditions of impending confusion and chaos as a result of conflicting decisions of the Courts of Appeals and of the District Courts respecting the obligations of the school districts pertaining to assignment of students and other phases of their operations in the 1970-71 school year. It would therefore be desirable for the issues to be decided before the beginning of the next school term which is September 8, 1970 in petitioners' dis-

trict in order to guide the many courts and school boards now making plans for the coming year and to avoid the occasion for reorganizations of systems after the 1970-71 school term is underway.

The issues herein are closely related to those in **Swann v. Charlotte-Mecklenburg Board of Education**, No. 1713, cert. granted, 38 LW 3522 although perhaps the record in this case brings into sharper focus the fundamental issue of the constitutional validity of the neighborhood school system. On June 29, 1970 the Court expressly deferred decision on motions to expedite in that case similar to the motion here made.

Wherefore, petitioners pray that the Court:

1. Advance consideration of the petition for writ of certiorari and any cross-petition or other response thereto for determination at the earliest feasible time.

2. If the Court determines to grant the petition for certiorari, to direct an expedited briefing schedule and to set the case for argument at a special term before the commencement of the 1970-71 school year. Special terms were convened to consider **Cooper v. Aaron**, 358 U. S. 1 (1958); **Rosenberg v. United States**, 346 U. S. 273 (1953); and **Ex Parte Quirin**, 317 U. S. 1 (1942).

Respectfully submitted

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THE BOARD OF EDUCATION OF THE LITTLE ROCK SCHOOL DISTRICT, et al.,
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Respondents.

PETITION FOR A WRIT OF CERTIORARI

To the United States Court of Appeals
For the Eighth Circuit

Petitioners pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Eighth Circuit entered in this case on May 13, 1970.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Eighth Circuit and the dissenting opinion of Judges Van Oosterhout and Gibson are not yet reported. They are set forth in the Appendix, pp. A-1-A-25. The decision and decree of the United States District Court for the Eastern District of Arkansas, Western Division, are unreported. They are set forth in the Appendix, pp. A-27-A-59.

JURISDICTION

The judgment of the United States Court of Appeals for the Eighth Circuit was rendered May 13, 1970. The jurisdiction of this Court is invoked under 28 U. S. C. 1254(1).

QUESTIONS PRESENTED

1. Where the record discloses that a metropolitan school district assigning students to schools near their homes by fairly drawn attendance zones can significantly increase the racial balance in each school only by providing compulsory transportation to schools long distances from their homes, does the Constitution require the geographical zoning system to be abolished and a system of compulsory busing be adopted?

2. Where a school district has desegregated its faculty so that in no school do the number of Negro teachers exceed 50 per cent, where students are assigned on a fairly drawn geographical zoning system to schools near their homes, and where students so assigned to a school where their race is in a majority have the option to transfer to a school where their race is in a minority, is the Constitution violated because such system fails to achieve some degree of racial balance in each school?

3. Where a school district has adopted a fairly drawn geographical zoning system for neighborhood schools, does the Constitution require that students so assigned to a school where their race is in the majority be given an option to transfer to a school where their race is in the minority?

4. Where a school district has adopted a fairly drawn geographical zoning system for neighborhood schools, does the Constitution require or permit the district court to order gerrymandering of zone lines solely for the pur-

pose of producing greater racial balance at certain schools?

5. Where a school district has adopted a fairly drawn geographical zoning system for neighborhood schools, does the Constitution authorize the district court to order implementation of a plan designed to racially balance the schools in one section of the district although it is undisputed in the record that the results would be contrary to those intended?

CONSTITUTIONAL PROVISIONS INVOLVED

This case involves the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States.

STATEMENT

1. Proceedings before the District Court.

Petitioners are the members of the Board of Education of the Little Rock School District. This is a metropolitan school district operating 42 schools for the benefit of 23,113 students. In July, 1968, the latest date such data appears in this record, there were 15,063 white students and 8,050 Negro students.

This school desegregation suit was originally filed on November 4, 1964 in the Eastern District of Arkansas by five Negro children and their parents who alleged a denial of equal protection of the laws arising out of the district's assignments of students pursuant to the Arkansas Pupil Assignment Law. Plaintiffs sought the adoption of a zoning system that would "generally assign all pupils to the schools nearest their residence." On January 14, 1966, the district court, in an unreported opinion, approved a transition by the school district to a freedom of choice desegregation plan. The freedom of choice plan

was approved in substance, but with minor modifications, by the Court of Appeals. **Clark v. Board of Education,** 369 F. 2d 661 (8 Cir. 1966). On June 25, 1968, after this Court's May 27, 1968 decisions in **Green v. County School Board,** 391 U. S. 430 (1968), and companion cases, the plaintiffs filed a Motion for Further Relief asking, *inter alia,* that the school district be required to submit a desegregation plan other than freedom of choice. After a response by the school district, a hearing was commenced on August 15, 1968, but was adjourned at the conclusion of the second day of testimony when plaintiffs' counsel moved to adjourn to permit the school district to submit a revised plan.

On November 15, 1968, the school district filed its revised plan which proposed, in accordance with the previous suggestion by letter of the district court to counsel for the school district, to reassign its teaching staff for the 1969-70 school year so that the number of Negro teachers within each school in the district would range from a minimum of 15 per cent to a maximum of 45 per cent and the number of white teachers within each school of the district would range from a minimum of 55 per cent to a maximum of 85 per cent, and to assign students to school on the basis of compulsory geographic attendance zones for elementary, junior high and senior high schools. All students would attend the school designated for the zone in which they resided, except that any eligible student in the district could elect to attend the Metropolitan Vocational-Technical High School which served all students in the district, teachers were permitted to enroll their children in the schools where they were assigned to teach and all students in the eighth, tenth and eleventh grades were permitted to choose between the school designated for the zone in which they resided or the school that such students were attending at the time of the adoption of the plan.

An evidentiary hearing on the district's plan began on December 19, 1968 and after three days of testimony on December 19, 20 and 24, 1968 was adjourned. Both plaintiffs and defendants presented expert testimony on the availability or unavailability to the district of alternative desegregation plans.

The district court noted that the plan involving compulsory geographic attendance zones was based on the neighborhood school concept by which students are assigned to attend classes at the school closest their home, that the only alternative plan to more proportionately balance student enrollment in the eastern and western parts of the City of Little Rock would require compulsory transportation of students by bus for distances of at least six to eight miles from their homes because of the heavy predominance of white citizens residing in the western section of the city and the heavy predominance of Negro citizens residing in the eastern portion of the city, that the school district at that time was not furnishing transportation to any students and that the annual cost (exclusive of the initial capital investment which would be required for needed buses) would be approximately $500,000.00 The school district's proposals for the desegregation of both students and faculty were approved. Thus plaintiffs achieved the basic relief they had earlier sought in the suit. However, certain modifications were engrafted upon the student desegregation plan by the district court. The boundary line of the zone of one of the district's five high schools was gerrymandered to include an additional 80 Negro students in the predominately white Hall High School. The consolidation or pairing of five elementary schools, one of which would have been attended by 313 Negro students and 34 white students under the zoning plan, was ordered. This project, known as the Beta Complex, was a part of a previous plan which had been considered by the school district.

Finally, the district court superimposed on the zoning plan a provision which would allow any student in the district to transfer from a school in which his race was a majority to a school with available space where his race was a minority.

2. **The decision of the Court of Appeals.**

The plaintiffs appealed, urging that the geographic attendance zone plan based on the neighborhood school concept failed to achieve a unitary system and that neither the neighborhood school concept nor the necessity of busing students could excuse the failure, and that the faculty assignment plan was inadequate to eliminate the racial identity of certain schools. The school district cross-appealed from those portions of the district court's order which gerrymandered the Hall High School attendance boundary, which required the majority to minority transfer option and which ordered implementation of the Beta Complex. The Court of Appeals *en banc*[1] (two Judges dissenting) reversed and remanded the district court's order insofar as it approved the geographic attendance zone assignment plan but affirmed as to the faculty desegregation plan, and as to the three modifications ordered by the district court. The Court of Appeals based its disapproval of the student assignment plan on the fact that several schools in the district remained "racially identifiable" because of the heavy predominance of students of one race and the conclusion that alternative means of pupil assignment were available to the district to achieve "more effective desegregation."

Chief Judge Van Oosterhout and Judge Gibson dissented, finding that "(E)verything has been done that

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[1] Judge Mehaffy did not participate. Prior to his appointment to the bench he was a member of the law firm representing this school district.

could be done short of abandonment of the neighborhood system . . .''; that the desegregation process in the district was no longer impeded by state action; that this Court had not decided that racial balance was required in all schools of a metropolitan school district, and that geographic attendance zones fairly drawn without racial discrimination should meet the constitutional standards of **Brown v. Board of Education**, 347 U. S. 483 (1954) and subsequent decisions of this Court.

REASONS FOR GRANTING THE WRIT

This case merits review by this Court on certiorari because it involves issues of vital importance to virtually all metropolitan school districts in this country which are now attempting to achieve a unitary school system prior to the commencement of the 1970-71 school year, pursuant to this Court's mandate in **Alexander v. Holmes County**, 396 U. S. 19 (1969). The absence of definitive guidelines for meeting the constitutional requirements in such districts, the square and irreconcilable conflicts on such issues between and within the various courts of appeal and the confusion resulting therefrom render the duty of such districts to establish and operate "unitary school systems within which no person is to be effectively excluded from any school because of race or color" virtually incapable of fulfillment. The principal focal point from which these opinions diverge, and the principal issue herein, is the constitutional status of student assignment plans which utilize what is commonly referred to as "the neighborhood school concept" by which children are assigned, on the basis of geographic attendance zones, to attend the school closest to their home. Because of the tendency of the people in this country, north, south, east or west, to reside in those areas of a city populated by other citizens of their race, such plans almost invariably

result in an irregular distribution by race of students in the schools of the district, with some schools having an all Negro or predominantly Negro enrollment and some schools having an all white or predominantly white enrollment, the gradations of minority representation in particular schools ranging from 0 per cent to 49 per cent. In Little Rock Negro students comprise approximately 35 per cent of the total student population in the district. Of the district's 42 schools, Negro students comprise from 1 to 15 per cent of the enrollment in ten schools, from 15 per cent to 50 per cent of the enrollment in seven schools, from 50 per cent to 100 per cent in 15 schools, and ten of the district's schools have no Negro students enrolled. Those schools having a high majority of Negro student enrollment are situated on the city's east side, those having a heavy predominance of white students are situated on the west side and the central city schools are generally substantially integrated. There is no contention that the boundaries of any zone were intentionally gerrymandered by the school district to include or exclude students because of their race. The faculty of every school in the district has not less than 14 per cent and not more than 50 per cent Negro teachers. As approved by the district court, the plan would permit any student to elect to transfer from a school in which his or her race is in the majority to a school where that race is a minority.

It was recognized by the district court and both opinions of the court of appeals that the only alternatives available to the district to achieve a racial balance in each school in the district more closely approximating the racial ratio of Negro and white students in the entire district involved either tremendously expensive plans based on an "educational park" or consolidation and pairing concepts or the re-drawing of zone lines in an east-west direction with the initiation of a cross-busing program to transport students from one side of the city past

the central city schools to schools in the opposite side of the city at an annual expense of $500,000.00.

The effect of the majority opinion below is to deny to the Little Rock School District the right to assign its public school students as they are assigned, and have been for decades, by the vast majority of the nation's school districts. The Fifth Circuit Court of Appeals has noted that "The neighborhood school system is rooted deeply in American culture." **United States v. Jefferson Co. Bd. of Educ.**, 372 F. 2d 836, 879 (5 Cir. 1966), aff'd *en banc*, 380 F. 2d 385 (5 Cir. 1967), cert. denied, 389 U. S. 840 (1967). In a decision in square conflict with that of the majority of the Court of Appeals in the case at bar, the Sixth Circuit Court said in **Deal v. Cincinnati Board of Education**, 369 F. 2d 55 (6 Cir. 1966), cert. denied, 389 U. S. 847 (1967), at page 60:

> "The neighborhood system is in wide use throughout the nation and has been for many years the basis of school administration. This is so because it is acknowledged to have several valuable aspects which are an aid to education, such as minimization of safety hazards to children in reaching school, economy of cost in reducing transportation needs, ease of pupil placement and administration through the use of neutral, easily determined standards, and better home-school communication."

This system of student assignment has received the endorsement of all three branches of the federal government in the very context in which it was attacked in the courts below. That is, its effects on the allocation of students of different races among the schools. This Court in **Brown** recognized geographic districting as the normal method of pupil placement and did not foresee changing it as the result of relief to be granted in that case. **Brown v. Board of Education**, 347 U. S. 483, 495 note 13, question 4(a). The Congress spelled out the national policy pertaining to

racial considerations in public school assignment in unambiguous terms in the Civil Rights Act of 1964. In the subchapter dealing with public education it provided:

> "'Desegregation' means the assignment of students to public schools and within such schools without regard to their race, color, religion, or national origin, but 'desegregation' shall not mean the assignment of students to public schools in order to overcome racial imbalance." 78 Stat. 246, 42 U. S. C., 2000-c(b) (1964).[2]

And, as noted in the dissenting opinion below, President Nixon in a recent public statement endorsed the neighborhood school system and disapproved "transportation of pupils beyond normal geographical school zones for the purpose of achieving racial balance * * *."

The constitutionality of neighborhood school zoning plans has been upheld by many courts of stature although

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[2] The legislative history establishes beyond doubt that it was the intention of Congress to adopt, and thus confirm as the national policy, Judge Beamer's interpretation of the Constitution in **Bell v. School City of Gary, Ind.**, 213 F. Supp. 819 (N. D. Ind.), aff'd 324 F. 2d 209 (7 Cir. 1963), cert. denied, 377 U. S. 924. Senator Humphrey, manager of the Bill in the Senate, made this statement during the debate:

> "Judge Beamer's opinion in the Gary case is significant in this connection. In discussing this case, as we did many times, it was decided to write the thrust of the court's opinion into the proposed substitute." 110 Cong. Rec. 12715.

The "thrust" of the Gary decision was accurately described by Senator Humphrey to be:

> "I should like to make one further reference to the Gary case. This case makes it quite clear that while the Constitution prohibits segregation, it does not require integration. The busing of children to achieve racial balance would be an act to effect the integration of schools. In fact, if the bill were to compel it, it would be a violation, because it would be handling the matter on the basis of race and we would be transporting children because of race. The bill does not attempt to integrate the schools, but it does attempt to eliminate segregation in the school systems." 110 Cong. Rec. 12717.

residential patterns produce racial imbalance in some of the schools. In addition to the decision of the Sixth Circuit Court in **Deal**, *supra*, and that of the Seventh Circuit Court in **Gary**, *supra*, see **Springfield School Committee v. Barksdale**, 348 F. 2d 261 (1 Cir. 1965); **Swann v. Charlotte-Mecklenburg Bd. of Ed.**, 369 F. 2d 29 (4 Cir. 1966); **Broussard v. Houston Ind. S. Dist.**, 395 F. 2d 817 (5 Cir. 1968), petition for rehearing *en banc* denied, 403 F. 2d 34 (5 Cir. 1968); **Downs v. Board of Ed. of Kansas City**, 336 F. 2d 988 (10 Cir. 1964).

However, other decisions, notably in the Fifth Circuit, have invalidated geographic zoning plans where some measure of racial balance was not achieved in the enrollment of students at schools in the district. See, e. g., **United States v. Greenwood Municipal Separate School Dist.**, 406 F. 2d 1086 (5 Cir. 1969); **Henry v. Clarksdale Municipal Separate School Dist.**, 409 F. 2d 682 (5 Cir. 1969); **United States v. Indianola Municipal Separate School Dist.**, 410 F. 2d 626 (5 Cir. 1969).

Far from resolving the areas of controversy, this Court's recent decisions in **Green v. County School Board**, 391 U. S. 430 (1968); **Alexander v. Holmes County Board of Education**, 396 U. S. 19 (1969), and **Carter v. West Feliciana School Board**, 396 U. S. 290 (1970), seem to have compounded the confusion as to the ultimate goal sought while accelerating the deadline for its accomplishment. School boards were not alone in the resulting quandary; many courts faced with the responsibility of determining compliance with the Constitution expressly decried the absence of criteria by which to determine whether or not a unitary system had been achieved and the "cryptic" nature of this Court's definition thereof. See, e. g., **Bivins v. Bibb County**, ... F. Supp. ... (N. D. Ga., January 21, 1970); **United States v. State of Georgia**, ... F. Supp. ... (N. D. Ga., December 17, 1969); **Beckett v. School Board of the City of Norfolk**, 308 F. Supp. 1274 (D. C.

Va. 1969); **Thornie v. Houston County,** ... F. Supp. ... (M. D. Ga., January 21, 1970); **Hilson v. Washington County,** ... F. Supp. ... (M. D. Ga., January 28, 1970); **Graves v. Board of Education of North Little Rock,** 299 F. Supp. 843 (D. C. Ark. 1969); **Northcross v. Board of Education of Memphis,** 420 F. 2d 546 (6 Cir. 1970).

This dilemma was apparently recognized by Chief Justice Burger in his concurring opinion in **Northcross v. Board of Education of the City of Memphis,** 397 U. S. 232 (1970), where he observed:

> ". . . the time has come to clear up what seems to be a confusion, genuine or simulated, concerning this Court's prior mandates.
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> * * *
>
> ". . . we ought to resolve some of the basic practical problems when they are appropriately presented including whether, as a constitutional matter, any particular racial balance must be achieved in the schools; to what extent school districts and zones may or must be altered as a constitutional matter; to what extent transportation may or must be provided to achieve the ends sought by prior holdings of the Court. Other related issues may emerge."

That such conflicts presently exist is best illustrated by a comparison of the varying views asserted in opinions rendered within the last five months in courts of appeals for the Fourth and Fifth Circuits and those of the majority and dissenting opinions of the Eighth Circuit Court of Appeals herein.

One panel of the Court of Appeals for the Fifth Circuit unanimously concluded that a residential zoning system in which each student was "assigned to attend the school nearest his or her home, limited only by the capacity of the school, and then to the next nearest school" satisfied constitutional requirements. **Ellis v. The Board**

of Public Instruction of Orange County, Florida, 423 F. 2d 203 (5 Cir. 1970). Less than three months later, another panel of that court concluded, also unanimously, that a similar residential zoning system did not meet constitutional demands, and ordered that a majority to minority transfer right be adopted, that transportation be provided transferring students, and that they be given priority for assignment to any schools they choose. **Singleton v. Jackson Municipal Separate School System**, ... F. 2d ... (5 Cir., May 5, 1970).

On the other hand, the Court of Appeals for the Fourth Circuit, sitting *en banc* in **Swann v. Charlotte-Mecklenburg Board of Education**, ... F. 2d ... (4 Cir., May 26, 1970), cert. granted No. 1713, 38 LW 3522 (June 29, 1970), divided three ways in its efforts to define what the Constitution requires of a metropolitan school district. Three judges were of the opinion that the obligation of such districts is to "use all reasonable means" to integrate all the schools, that a plan was not constitutionally deficient if such reasonable efforts failed to integrate all the schools, and that the amount of busing ordered by the district court to achieve racial balance in the elementary schools was unreasonable. Two judges thought that the district court was correct in setting as a goal the system-wide ratio of Negro and white students, and then requiring sufficient busing of students to produce approximately that racial balance in each school. The third view, expressed by Judge Bryan, is that the district court erred in entering an injunction requiring the school authorities to transport students because "Busing to prevent racial imbalance is not as yet a Constitutional obligation."

It has already been noted herein that the Court of Appeals for the Eighth Circuit in its decision in this case published May 13, 1970, divided five to two on the question of whether fairly drawn attendance zones for the assignment of students satisfied constitutional require-

ments. The state of the law in this area—the legal standards by which local school authorities must attempt to guide and measure their official conduct—is succinctly summarized in the dissenting opinion below:

> "The District Courts and the Courts of Appeals are divided upon the constitutional validity of retaining geographical school zones fairly drawn without discrimination. Such issue can only be authoritatively answered by the Supreme Court."

The issues presented in Questions Presented Nos. 2 through 5 are subsidiary to the fundamental issue contained in Question Presented No. 1. However, they are necessary to preserve for consideration by this Court the consistent position maintained by petitioners in both courts below. That is, that the original command of **Brown** that public school systems must operate free from racial classifications has not been altered by this Court's subsequent decisions in the matter. This was confirmed as recently as **Alexander v. Holmes County Board of Education**, 396 U. S. 19 (1969), in which this Court said it was the constitutional duty of every school district to operate "school systems within which no person is to be effectively excluded from any school because of race or color."

Each of the devices superimposed upon the petitioners' admittedly fairly drawn zoning system by the district court, the subjects of Question Presented Nos. 3, 4, and 5, define the rights of the students affected on a purely racial basis. If **Alexander** means what it says, each of these devices by which students are excluded from certain schools solely because of their race must be invalidated.

In the narrow context of the plight of the Little Rock School District that prompts the filing of this petition, this case has been remanded by the Court of Appeals with no standards by which the Board, or the district court,

can measure its legal obligations pertaining to school operations during the next school year which commences September 8, 1970. The dissent below noted that the Board is "at a loss to know what course to take in devising a desegregation plan" and that the remand in these circumstances can "only create confusion and lack of stability in the Little Rock school system."

However, the circumstance that makes this case an appropriate one for the earliest possible consideration of this Court is that metropolitan school districts all over the nation are in a like dilemma. The fundamental issue tried in this case, on a record meticulously made by both sides, was the validity of the neighborhood school concept of student assignment. Educational experts testified for both sides, and the district court squarely decided this issue in a well reasoned opinion. It is therefore submitted that this case is a particularly suitable vehicle for this Court to resolve this question of urgent national importance.

CONCLUSION

For the foregoing reasons it is submitted that the petition for certiorari should be granted to review the judgment of the United States Court of Appeals for the Eighth Circuit.

Respectfully submitted

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July 15, 1970.

APPENDIX A

United States Court of Appeals
For the Eighth Circuit

No. 19,795.

Delores Clark, et al.,
Appellants,

v.

The Board of Education of the Little Rock School District, et al.,
Appellees.

No. 19,810.

Delores Clark, et al.,
Appellees,

v.

The Board of Education of the Little Rock School District, et al.,
Appellants.

Appeals from the United States District Court for the Eastern District of Arkansas.

Opinion

[May 13, 1970.]

Before Van Oosterhout, Chief Judge; Matthes, Blackmun, Gibson, Lay, Heaney and Bright, Circuit Judges, En Banc.*

* Judge Mehaffy took no part in the consideration or decision of these appeals.

Matthes, Circuit Judge.

This appeal and cross-appeal from the judgment of the United States District Court for the Eastern District of Arkansas (the late and lamented Gordon E. Young) causes us again to consider whether the efforts of the Board of Education of the Little Rock, Arkansas, School District (hereinafter referred to as District or Board) to desegregate its schools satisfy the Equal Protection Clause of the Fourteenth Amendment as interpreted in *Brown v. Board of Education*, 347 U. S. 483 (1954) (Brown I) and subsequent decisions of the Supreme Court which have delineated the principles enunciated therein.

The process of desegregation in this District has been controversial and its long history is recorded in the decisions cited in the margin.[1] While we focus our attention on the events from 1966 to the present, it is necessary to briefly sketch the background against which these events are set. Up until 1954 and *Brown I*, the District, pursuant to state law, operated separate educational facilities for black and white children. After much turmoil, and the passage of several years, students were assigned to schools according to the dictates of the Arkansas pupil placement statute. When this practice was found to contravene the Fourteenth Amendment,[2] a "freedom of choice" plan was

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[1] *Aaron v. Cooper*, 143 F. Supp. 855 (E. D. Ark. 1956), *aff'd* 243 F. 2d 361 (8th Cir. 1957); *Aaron v. Cooper*, 2 Race Rel. L. Rep. 934-36, 938-41 (E. D. Ark. 1957), *aff'd Thomason v. Cooper*, 254 F. 2d 808 (8th Cir. 1958); *Aaron v. Cooper*, 156 F. Supp. 220 (E. D. Ark. 1957), *aff'd sub nom. Faubus v. United States*, 254 F. 2d 797 (8th Cir. 1958); *Aaron v. Cooper*, 163 F. Supp. 13 (E. D. Ark.) *rev'd* 257 F. 2d 33 (8th Cir.), *aff'd sub nom. Cooper v. Aaron*, 358 U. S. 1 (1958); *Aaron v. Cooper*, 261 F. 2d 97 (8th Cir. 1958); *Aaron v. Cooper*, 169 F. Supp. 325 (E. D. Ark. 1959); *Aaron v. McKinley*, 173 F. Supp. 944 (E. D. Ark. 1959), *aff'd sub nom. Faubus v. Aaron*, 361 U. S. 197 (1959); *Aaron v. Tucker*, 186 F. Supp. 913 (E. D. Ark. 1960) *rev'd Norwood v. Tucker*, 287 F. 2d 798 (8th Cir. 1961); *Clark v. Board of Education of Little Rock*, 369 F. 2d 661 (8th Cir. 1966).

[2] *Norwood v. Tucker*, 287 F. 2d 798 (8th Cir. 1961).

adopted. In *Clark v. Board of Education,* 369 F. 2d 661 (1966), we sanctioned "freedom of choice" in principle but found the District's plan to be deficient in failing to provide adequate notice to the students and their parents and to provide a definite plan of staff desegregation. We remanded and directed the district court to retain jurisdiction to insure adoption and operation of a constitutional plan for the full desegregation of the Little Rock schools.

In August of 1966, four months prior to our decision in Clark, the Board apparently recognizing the inadequacy of its existing mode of desegregation, employed a team of experts from the University of Oregon to make a study of the system and prepare a master plan of desegregation. The team submitted its recommendations, the "Oregon Report," in early 1967. In brief, the recommendations called for abandonment of the neighborhood school concept and the development of an educational park system[3] through the institution of a capital building program and the pairing of schools. The cost of implementing the Oregon plan was estimated to be in excess of ten million dollars. In the November 1967 school board election at least one of the incumbent members of the Board who supported the "Oregon Report" was defeated and replaced by a candidate who opposed the report. The election results were interpreted as a public rejection of the "Oregon Report," and it was subsequently abandoned by the Board.

Still searching for a solution, the Board directed Floyd W. Parsons, Superintendent of Schools, and his staff to

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[3] The educational park concept, as applied to the Little Rock District, called for a single attendance zone coextensive with the school district boundaries. One high school was to be established drawing students from the entire District. Similarly, fewer middle schools and elementary schools would be operated, and those operated would be concentrated near the center of the District. Some pairing was contemplated at the elementary level. Obviously, implementation of such a plan would necessitate transportation of some students from their homes to the schools.

prepare a comprehensive plan for desegregation of the schools. Acting accordingly, this group submitted a proposal known as the "Parsons Plan." The plan provided for desegregation of the high schools and two groups of grade schools. It made no provision for the junior high schools. The high schools were to be desegregated by "strip-zoning" the District geographically, generally from east to west so as to form three attendance zones for the high school students. The Horace Mann High School, an all Negro school, was to be abolished and utilized as an elementary facility, and additions were to be made to two of the three remaining high schools. The two groups of elementary schools were to be desegregated by pairing of schools within each group.[4]

The cost of implementing the "Parsons Plan" was estimated at five million dollars,[5] and a bond issue for that amount was submitted to the voters in March of 1968. Despite active campaigning by Superintendent Parsons and several Board members, the bond issue was decisively defeated, as were two incumbent members of the Board who supported the plan. Thus, as of March, 1968, the District, although recognizing the inadequacies of the existing means of desegregation, had been unable to develop and implement an acceptable alternative. And, students were assigned for the 1968-69 school year according to "freedom-of-choice."

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[4] The "Parsons Plan" called for the creation of two floating zones—the Alpha Complex in the northeastern corner of the District and the Beta Complex in the south central portion of the District. Within these two complexes there existed a number of elementary schools, some of which were predominantly black and others predominantly white. Under Mr. Parsons' plan these elementary schools would be paired in order to achieve a "reasonable racial ratio" in each of the schools. Some remodeling of existing facilities was contemplated in implementing the two complexes.

[5] However, less than 40% of this sum was directly related to achieving desegregation. The remaining 60% of the cost arose from needs of the system apart from efforts to desegregate.

On June 25, 1968, plaintiffs moved the district court for further relief.[6] The court responded by setting a hearing for August 15, 1968, and, by letter of July 18, 1968, suggested to the Board that it devise a geographic zoning plan to correct student segregation. The Board was also admonished to devise a plan for faculty desegregation so that the racial division of the faculty in each school would approximate the racial breakdown of the faculty in the entire District. At the August 15th hearing the District presented an "interim" zoning plan which was admittedly incomplete and required more study, and requested that the "freedom of choice" method of pupil placement be retained for the 1968-69 school year. After the second day of testimony, the hearing was recessed to enable the District to formulate a final plan for the disestablishment of racial segregation to become effective at the beginning of the 1969-70 school year. Before recessing, the court reaffirmed its earlier suggestion concerning faculty desegregation and stated unequivocally that "freedom of choice" as applied to the Little Rock schools would not satisfy the constitutional requirements. The Board was directed to file its plan not later than November 15, 1968.

During the Board's deliberations two plans were submitted for its consideration and rejected. A group of Negro citizens offered the "Walker Plan," so designated because John Walker, counsel for plaintiffs, was a moving force in its formulation. The "Walker Plan" contemplated grade restructuring and pairing of schools throughout the District and at all grade levels. Substantial transportation of students would have been necessary to implement the plan. The Board also considered and rejected a proposal offered by two of its members calling

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[6] Several parties sought to intervene. A group of Negro children, by their parents, were permitted to intervene as parties plaintiff. The Little Rock Classroom Teachers Association was also permitted to intervene.

for retention of "freedom of choice" plus the reservation of space at predominantly white schools for Negro children desiring to attend them. The Board finally adopted, with two members dissenting, a plan for pupil assignment based on geographic attendance zones.

Attached to this opinion is a reduced reproduction of Defendants' Exhibit 22 depicting the geographic zones proposed, and designating the location of elementary, junior high and high school buildings. The elementary zones are defined by fine lines and the junior high zones by broad lines. On the original exhibit the high school zones are identified by four different colors. Because we were unable to reproduce the colors, we have highlighted the high school zone boundaries by a crossed line, and have appropriately designated the several colors of the original exhibit. Except for this alteration, the map is an exact reproduction of the original exhibit.

As illustrated by the map, the Little Rock School District is an irregular rectangle running from east to west. Natural boundaries on the north and south and the commercial and industrial nature of the eastern portion have caused the city to expand toward the west. Generally speaking the eastern one-half of the District is inhabited predominantly by Negro citizens and the western one-half predominantly by white citizens.

At the beginning of the 1969-70 school year there were 24,248 students in the system; 15,027 white and 9,221 Negro. They attended five high schools, seven junior high schools, and thirty-one elementary schools throughout the District.

Under the District's plan, all students were to attend schools serving their grade level in their zone of residence except: (1) students attending Metropolitan High School,[7]

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[7] Metropolitan High School is a vocational school which serves the entire District. No segregation exists as to this facility.

(2) students in the 8th, 10th and 11th grades in 1969-70, who were permitted to choose between the school in their zone and the school they had previously attended[8] and (3) children of teachers in the District, who could attend the school where their parents were employed. The proposal for faculty desegregation complied with the suggestion of Judge Young. It called for the assignment of teachers so that the percentage of Negro teachers in each school ranged from a maximum of 45% to a minimum of 15%.

Pursuant to the court's direction at the conclusion of the August 16 hearing, the District submitted the plan now under consideration. On December 19, the hearing was resumed and additional evidence was introduced. On May 16, 1969, the district court filed its unreported opinion. While approving the District's plan in principle, the court amended it by: (1) redrawing the Hall High School zone to include approximately 80 additional Negro children; (2) establishing a "Beta Complex";[9] (3) providing for majority to minority transfer of students.[10]

Both parties have appealed from the district court's judgment.

A brief summary of the contentions urged upon us will suffice. Plaintiffs submit that the geographical zones as drawn merely serve to perpetuate the previously established segregated attendance patterns of the students in the District. Neither the neighborhood school concept nor

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[8] This departure from geographical attendance zones was an effort to minimize disturbance of the extra-curricular patterns established by students in these grades.

[9] The court adopted in part Mr. Parsons' concept calling for the pairing of certain elementary schools within a floating zone. *See* note 4 *supra*.

[10] This provision of the court's modification permitted students attending schools in which their race was in the majority to transfer to schools in which their race was in the minority, subject to the availability of space in the transferee school.

the possible necessity of busing, according to plaintiffs, excuses the District's failure to achieve a unitary system devoid of racially identifiable schools. Lastly, they argue that the faculty assignment approved by the district court continues to preserve the racial identity of certain schools.[11]

Conversely, the District is of the firm conviction that the plan that it submitted to the district court is constitutionally faultless. It reasons that the geographical zones were drawn without regard to race, and that, as such, the plan established a unitary system within the constitutional requirements. It is further asserted that the constitution does not require transportation of children outside the area of their residence in order to achieve racial balance in the schools, and indeed the assignment of pupils according to race would itself be a violation of the Fourteenth Amendment. According to the District, the neighborhood school concept is educationally sound, and, in view of community attitudes, the only feasible means of operating the Little Rock system.

On cross-appeal the District objects to the district court's departure from the geographical zoning scheme it submitted. It is argued that the gerrymandering of the Hall zone to include more Negro students and the majority to minority transfer provision are violative of the Fourteenth Amendment since they require racial distinctions to be made. A similar objection is made to the "Beta Complex".

THE FACULTY

For the 1969-70 school year there were 1053 teachers employed by the District—29% Negro and 71% white. Under the plan adopted by the District and approved by

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[11] Plaintiffs also assert that the district court erred in refusing to allow them attorney fees.

the district court, the percentage of Negro teachers in each of the schools varies from 14% to 50%.[12] Plaintiffs complain that even under the approved plan there is a general pattern throughout the system whereby schools with a high proportion of Negro students ("Negro schools") have a higher percentage of Negro teachers. They argue that this pattern tends to reinforce the racial identity of those schools.

Just as schools may be racially identified by the makeup of their student body, so may they be identified by the character of their faculty, and school boards are obligated to correct any previous patterns of discriminatory teacher assignment. One means of correcting such patterns is to assign teachers so that the ratio of Negro teachers to white teachers in each school approximates the ratio for the District as a whole. *United States v. Montgomery County Board of Education*, 395 U. S. 225 (1969); *Yarbrough v. Hulbert—West Memphis School District*, 380 F. 2d 962 (8th Cir. 1967). However, the ultimate goal is the assignment of teachers solely on the basis of educationally significant factors, wherein race in and of itself is irrelevant.

The plan adopted by the District provides for the nondiscriminatory assignment of teachers and affirmative steps to correct the existing imbalance. The experts agreed that the District's plan was ambitious, and in fact some doubt was expressed as to whether it could be carried out. However, to a remarkable degree it has been implemented, and its implementation has radically changed the complexion of faculties throughout the district. Where before Negro teachers were heavily concentrated in those schools long identified as Negro, they

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[12] The district court judge, on the basis of projected figures, thought the percentages would range from 15% to 45%. Because of resignations, attrition, etc. these figures proved slightly incorrect.

are now distributed throughout the District so that no school has more than 50% Negro teachers. Indeed, and particularly at the elementary level, in most of the schools the percentage of Negro teachers in any particular facility varies only slightly from the percentage of Negro teachers in the District as a whole.

Therefore, we affirm the district court's approval of the District's plan with respect to faculty.[13] See *Kemp v. Beasley*, ... F. 2d ... (8th Cir. 1970) (*Kemp III*). The plan as implemented has corrected and exaggerated racial imbalance of teachers in the system. Faculty desegregation through teacher assignment is a dynamic process. The District has committed itself to the non-discriminatory assignment of teachers and the correction of previous segregation, and has for the 1969-70 school year evidenced its good faith in fulfilling these commitments. We are confident that any remaining vestiges of faculty segregation will be corrected by the District's continuing efforts.

STUDENTS

After deliberate consideration, we are driven to the conclusion that the proposal for student desegregation does not comport with the recent pronouncements of the Supreme Court, hence it must be rejected. We hasten to add, however, that significant progress has been made by the District. For example, Central High School, the scene of so much turmoil in 1956, is now desegregated—1,542 white, 512 Negro. So too are several other previously all-black or all-white schools. However, as we recognized in

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[13] Compare the order of Judge Johnson in *Carr v. Montgomery County Board of Education*, 289 F. Supp. 647 (M. D. Ala. 1968). In a district where the faculty ratio was 3 to 2, the order required that in the coming school year only 1 of every 6 members of each school's faculty be from the race which was in the minority in that particular faculty. This was approved in *United States v. Montgomery County Board of Education*, 395 U. S. 225 (1969).

Kemp III, supra, the finding of some progress does not end the inquiry whether the particular District has satisfied its constitutional obligations.

It is, of course, axiomatic that the operation of separate schools for black and white children under sanction of state law is violative of the Fourteenth Amendment. As the Court observed in *Brown I, supra,* in the field of education "separate facilities are inherently unequal." And in *Brown II,* 349 U. S. 294 (1955), school districts which had previously operated "separate" schools were ordered to take the necessary action to eradicate this constitutional violation. The question now before us is whether the District has fulfilled its constitutional obligation to convert what admittedly was a segregated school system to a "unitary system in which racial discrimination would be eliminated root and branch." *Green v. County School Board of New Kent County,* 391 U. S. 430, 438 (1968).

Principal guidance from the Supreme Court as to this issue is to be found in the trilogy of cases decided in 1968. *Green v. County School Board of New Kent County, supra; Raney v. Board of Education of Gould School District,* 391 U. S. 443 (1968); *Monroe v. Board of Commissioners of City of Jackson,* 391 U. S. 450 (1968). Each of the school districts there involved had adopted "freedom of choice" plans (or modifications thereof) for pupil assignment. In general the "freedom of choice" plans under consideration had not significantly altered attendance patterns which had been established by pre-*Brown I* state segregation laws. "Negro schools" continued to be attended by Negro students and "white schools" by white students. For example, in *Green* 85% of the Negro children continued to attend the all Negro school. Despite the School Board's contention in *Green* that it had "fully discharged its obligation by adopting a plan by which every student, regardless of race, may 'freely' choose the school he will attend." 391 U. S. at 437, the Court found that "freedom of choice"

as applied to these three districts did not meet the constitutional requirements.

The thrust of all three opinions is that the manner in which desegregation is to be achieved is subordinate to the *effectiveness* of any particular method or methods of achieving it. The following language is instructive:

> "The burden on a school board today is to come forward with a plan that promises realistically to work, and promises realistically to work *now*.
>
> The obligation of the district courts, as it always has been, is to assess the *effectiveness* of a proposed plan in achieving desegregation. There is no universal answer to complex problems of desegregation; there is obviously no one plan that will do the job in every case. The matter must be assessed in light of the circumstances present and the options available in each instance. It is incumbent upon the school board to establish that its proposed plan promises meaningful and immediate progress toward disestablishing state-imposed segregation. It is incumbent upon the district court to weigh that claim in light of the facts at hand and in light of any alternatives which may be shown as feasible and more promising in their effectiveness . . . .
>
> We do not hold that 'freedom of choice' can have no place in such a plan. We do not hold that a 'freedom of choice' plan might of itself be unconstitutional, although that argument has been urged upon us. Rather all we decide today is that *in desegregating a dual system a plan utilizing 'freedom of choice' is not an end in itself.*" 391 U. S. at 439-40. (Emphasis in the second and third paragraphs supplied.)

More recent pronouncements by the Court are consistent with this pragmatic approach. In *Alexander v. Holmes County Board of Education*, 396 U. S. 19 (1969), the Court ordered the "immediate" termination of dual school sys-

tems and the operation of "unitary school systems within which no person is to be *effectively excluded* from any school because of race or color." Id. at 20. (Emphasis supplied.)

Review of desegregation decisions from this circuit reveals that we too have tested proposed plans of desegregation by their effectiveness. For instance, ten years ago we held that the Arkansas pupil placement statute, on its face a non-discriminatory and educationally rational means of pupil placement, could not be used to assign students, if it failed to correct the segregated character of the system. *Dove v. Parham*, 282 F. 2d 256 (8th Cir. 1960).[14] In 1969, prior to the *Green* trilogy, we were faced with a "freedom of choice" plan. *Kemp v. Beasley*, 389 F. 2d 178 (8th Cir. 1968) (*Kemp II*). It too was asserted to be educationally sound and devoid of racial considerations. However, we tested "freedom of choice" as applied in that particular instance and found it lacking; not by viewing it in the abstract, but rather by considering whether it effectively advanced the desegregation process. Our analysis in *Kemp II* was, of course, approved by the *Green* trilogy.[15] And, only very recently we again found "freedom of choice" to be constitutionally deficient in *Kemp III, supra.* Although desegregation had been accomplished at the high school level by pairing and the junior high level by "freedom of choice," application of "freedom of choice" to the elementary grades left 5 of the 10 schools racially identifiable. We ordered the District to take the necessary steps to correct the segregated character of those 5 elementary schools.

Thus, as of this date, it is not enough that a scheme for the correction of state sanctioned school segregation is

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[14] *See also, Norwood v. Tucker*, 287 F. 2d 798 (8th Cir. 1961).

[15] Indeed *Kemp II* was cited with approval. 391 U. S. at 440.

non-discriminatory on its face and in theory. It must also prove effective. As the Court observed in *Green*:

> "In the context of the state imposed pattern of long standing, the fact that in 1965 the Board opened the doors of the former 'white' school to Negro children and of the 'Negro' school to white children merely begins, not ends, our inquiry whether the Board has taken steps adequate to call for the dismantling of a well-entrenched dual system." 391 U. S. at 437.

We believe that geographic attendance zones, just as the Arkansas pupil placement statutes, "freedom of choice" or any other means of pupil assignment must be tested by this same standard.[16] In certain instances geographic zoning may be a satisfactory means of desegregation. In others it alone may be deficient. Always, however, it must be implemented so as to promote desegregation rather than to reinforce segregation. See *United States v. Indianola Municipal Separate School District*, 410 F.2d 626 (5th Cir. 1969); *Henry v. Clarksdale Municipal Separate School District*, 409 F.2d 682 (5th Cir. 1969); *United States v. Greenwood Municipal Separate School District*, 406 F. 2d 1086 (5th Cir.), *cert. denied*, 395 U. S. 907 (1969).

When viewed in context of the above principles, the plan approved by the district court is constitutionally infirm.

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[16] The Board's reliance on language in *Green* for the proposition that geographic zoning in and of itself is constitutionally mandated is misplaced. In two places in the *Green* opinion the Court did refer to geographic zoning as a *possible* alternative to "freedom of choice." However, it is clear when considered in context, that the Court was limiting its suggestion to the Kent district, a district without residential segregation. Indeed footnote 6 quotes with approval a paragraph from the concurring opinion in *Bowman v. County School Board*, 382 F. 2d 326 (4th Cir. 1967), in which it is stated, ". . . a geographical formula is not universally appropriate." Id. at 332. Any other reading of the *Green* decision would be entirely inconsistent with the Court's declaration that the ultimate test is effectiveness and many plans may or may not prove effective in a particular instance. *See also* the footnote appearing at 391 U. S. 460.

For a substantial number of Negro children in the District, the assignment method merely serves to perpetuate the attendance patterns which existed under state mandated segregation, the pupil placement statute, and "freedom of choice"[17]—all of which were declared unconstitutional as applied to the District. In short the geographical zones as drawn tend to perpetuate rather than eliminate segregation.[18] Several examples are illustrative. During the 1968-69 school year, under "freedom of choice" Mann High School, located in the eastern portion of Little Rock and historically an all Negro school, was attended by all Negroes. In this school year it is attended by 838 Negroes and 4 whites. Parkview High and Hall High, historically white schools,[19] have 45 Negro and 793 white and 40 Negro and 1,415 white students, respectively. Prior to this year both Booker Junior High[20] and Dunbar Junior High[21] were all Negro. Now they are attended by 733 Negro and 20 white and 685 Negro and 18 white students, respectively. Two junior high schools located in the western portion of the city are attended by similar proportions of students with white students predominating. At the elementary level, Carver, Gillam, Granite Mountain, Ish, Pfeifer, Rightsell, Stephens, and Washington all have 95%

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[17] Under "freedom of choice" in 1968-69 approximately 75% of the Negro students attended schools in which their race constituted 90% or more of the student body. The plan adopted by the district court reduces this percentage by only 6%.

[18] It was agreed by all the experts that zone lines for the District would have to be drawn from east to west if previously established attendance patterns were to be broken.

[19] Both of these schools were constructed after 1956.

[20] This school, named after a prominent Negro, was constructed in 1963. Only Negro children were assigned to it and it was staffed by Negro teachers.

[21] Prior to 1954, Dunbar was the Negro junior high school for the District.

or more Negro students.[22] In a number of other elementary schools the reverse is true. All of the foregoing schools are racially identifiable.

While it is true that the majority to minority transfer provision has the potential for alleviating the situation to an extent, it is in large part an illusory remedy. No transportation is provided for those children choosing to take advantage of it. And, it requires little insight to recognize that the children who are most likely to desire transfer are those least able to afford their own transportation. Moreover, there is no assurance that space will be available in the schools to which most of the transfers would probably occur.[23]

Alternative means of pupil assignment which would provide more effective desegregation were and are available to the District. Indeed, several such means were embodied in plans submitted to and considered by the Board. We point this out not as an endorsement of any particular plan, but merely to emphasize that alternatives are available. Of particular significance is the "Parsons Plan," which was developed by a group of educators closely affiliated with the District and presumably quite sensitive to the educational needs and problems of the community. It was long ranged and comprehensive. If implemented, it would have cured the isolation of Mann High School as a Negro facility. The "Parsons Plan" also would have

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[22] Carver, Granite Mountain, Pfeifer, and Washington were operated as "Negro schools" under state-imposed segregation. Rightsell was converted to a "Negro school" in 1961. Gillam and Ish, named after prominent Negroes and located in Negro neighborhoods, were constructed in 1963 and 1965, respectively. They were staffed by Negroes and have always been attended almost solely by Negro students.

[23] Compare the transfer provision adopted in *Ellis v. Board of Public Instruction of Orange County*, . . . F. 2d . . . (5th Cir. Feb. 17, 1970), which provided transportation for children choosing to transfer and insured that space would be available in the transferee schools.

erased the racial identity of several elementary schools which exists under the plan now before us. It enjoyed the support of the Board and the professional staff of the system.

Because of community opposition to the plan, as manifested in the defeat of a millage increase necessary to finance its implementation, the "Parsons Plan" was not adopted. Similarly, community opposition was a substantial factor in rejection of other promising plans. We are not unmindful of the difficult nature of the Board's duties in this District.[24] However, it has long been the law of the land that community opposition to the process of desegregation cannot serve to prevent vindication of constitutional rights. *Monroe v. Board of Commissioners of the City of Jackson, supra; Aaron v. Cooper,* 358 U. S. 1 (1958); *Jackson v. Marvell School District No. 22,* 416 F.2d 380 (8th Cir. 1969). Accordingly, we are not at this time prepared to hold that the geographical zoning plan adopted by the lower court is the *only* "feasible" means of assigning pupils to facilities in the Little Rock School System. *Green v. County Board of Education of New Kent County,* 391 U. S. at 439.

CROSS-APPEAL

By way of cross-appeal defendants challenge those provisions of the district court's order departing from the geographical zoning plan submitted by the Board. Since we have found the plan adopted by the district court to be deficient in the aforementioned particulars thereby requiring remand for adoption of an entirely new plan, defendants' objections become somewhat academic. Nevertheless, we briefly address ourselves to the contention that any consideration of race in the placement of pupils is a violation of the Fourteenth Amendment.

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[24] *Aaron v. Cooper,* 257 F. 2d 33, 39 (1958).

This argument is not new and has been previously heard and rejected by this court. *Kemp II,* 389 F. 2d at 187-88. *See also United States v. Jefferson County Board of Education,* 372 F. 2d 836, 876-78 (5th Cir. 1966); *Wanner v. County School Board,* 357 F. 2d 452, 454-55 (4th Cir. 1966); *Fiss, Racial Imbalance in the Public Schools: The Constitutional Concepts,* 78 Harv. L. Rev. 564, 577-78 (1965). As the *Wanner* court observed it would be somewhat anomolous to prevent correction of previous segregation under the guise that the remedy impermissibly classifies by race. Accordingly, we are not persuaded by defendants' contention that the Fourteenth Amendment prohibits the drawing of geographic zones to promote desegregation, the majority to minority transfer plan, or any other consideration of race for the purpose of correcting unconstitutionally imposed segregated education.

REMEDY

This court has long recognized that it should not endeavor to devise a plan of desegregation for any school district. *Kemp III, supra; Yarbrough v. Hulbert—West Memphis School District, supra; Clark v. Board of Education of Little Rock, supra; Kemp v. Beasley,* 352 F. 2d 14 (8th Cir. 1965); *Aaron v. Cooper,* 257 F. 2d 33 (8th Cir. 1958). This task is basically within the province of the school board under the supervision of the district court. We continue to adhere to this philosophy. In light of the size and complexity of the Little Rock School District it is additionally important that the Board be afforded ample opportunity to formulate a comprehensive plan of desegregation. Nor do we believe it proper to direct the Board to adopt a particular means of school desegregation. As was observed in *Green v. County Board of Education of New Kent County, supra,* there are a variety of methods of desegregation, and no particular method is

universally appropriate. Considering the unique problems facing the District any one of several different methods, or a combination thereof, may be deemed appropriate. We leave this decision to the school board and the sound discretion of the district court. We do, however, strongly suggest that the Board consider enlisting the services of the Department of Health, Education and Welfare in developing an acceptable scheme of desegregation.

Consistent with these above views we consider several questions either implicitly or explicitly raised in the parties' briefs and oral arguments.

As in *Kemp III, supra,* we do not hold that precise racial balance must be achieved in each of the several schools in the District in order for there to be a "unitary system" within the meaning of the constitution. Nor do we hold that geographical zoning or the neighborhood school concept are in and of themselves either constitutionally required or forbidden. See *Kemp III.* We merely hold that as employed in the plan now before us they do not satisfy the constitutional obligations of the District. By so holding we express no opinion as to the relative merits or demerits of the neighborhood school.

Lastly, we do not rule that busing is either required or forbidden. As Judge Blackmun stated in *Kemp III,* "Busing is only one possible tool in the implementation of unitary schools. Busing may or may not be a useful factor in the required and forthcoming solution of the . . . problem which the District faces." ... F. 2d .... We observe in passing, however, that busing is not an alien practice in the state of Arkansas or this District. Some busing was employed by the District in the past to preserve segregated schools. Presently the District, through the use of federal funds, aids some children in eastern Little Rock who use public transportation to travel to schools, and some private busing occurs in the western portion of the

city. Of course, busing of school children is a common practice in many less urban areas of the state and is partially subsidized with state funds.

The case is remanded to the district court with directions to require the school district to file in the district court on or before a date designated by it a plan consistent with this opinion for the operation of the system "within which no person is to be effectively excluded from any school because of race or color." *Alexander v. Holmes County Board of Education*, 396 U. S. at 20. The plan shall be fully implemented and become effective no later than the beginning of the 1970-71 school year. The district court shall retain jurisdiction to assure that the plan approved by it is fully executed.

Because of the urgency of formulating and approving an appropriate plan, our mandate shall issue forthwith and will not be stayed pending petitions for rehearing or certiorari.

Costs are allowed to plaintiffs. On remand the question of attorney fees may again be presented to the district court.

Van Oosterhout, Chief Judge, and Gibson, Circuit Judge, dissenting in part.

Judge Matthes' carefully prepared majority opinion fairly sets out the pertinent facts and issues presented by the appeal and cross-appeal in this case. We are in agreement with his determination that the plan should be approved as to the faculty desegregation, and also with his affirmance on the cross-appeal. We likewise agree that the court properly retained jurisdiction of the case.

With reluctance, we find it necessary to dissent from the holding of the majority that the plan for student desegregation should be rejected. The late Judge Young, a very

able and conscientious judge, heard this case. He advised the Board that the existing freedom of choice plan, which was being fairly administered, did not meet standards for desegregation set by the Supreme Court and he directed the Board to present a geographical zoning plan. After much study, the Board presented such a plan. An extensive evidentiary hearing was held at which school experts testified on behalf of each of the parties. The cause was well tried by able counsel for all parties. In due course, Judge Young filed a well-considered opinion setting forth the law, the evidence and his conclusions. Included in his findings of fact is the following:

> "As shown by Defendants' Exhibit 22, the Board's plan for geographical attendance zones, assuming the legality of the neighborhood school concept, seems fairly and equitably drawn. There is no indication of gerrymandering."

Such finding is not contested by plaintiffs. It is supported by substantial evidence and is not clearly erroneous.

Judge Young modified the plan in the manner set forth in the majority opinion. The principal effect of the modification was to impose upon the geographical zoning a freedom of choice option which would allow any student whose race was in the majority in any school to transfer to a school where his race was in the minority. As stated by Judge Young, this modification would permit Negro students who would otherwise be locked into predominantly Negro schools to transfer to predominantly white schools. Other modifications made, which Judge Young conceded were gerrymandering, were designed to further racial balance in the schools. The Board's plan as modified was approved. The court in its decree retained jurisdiction over the case and required the Board to report further upon the operation of the plan.

For the reasons assigned by Judge Young in his well-considered opinion, we believe the modified plan as ap-

proved meets constitutional standards. Everything has been done that could be done short of abandonment of the neighborhood school system to eliminate segregation. Plaintiffs have pointed to no existing state law that prevents desegregation or integration and we find no such law. It can no longer be fairly said that the desegregation process is impeded by state law.

Geographic attendance zones fairly laid out without racial discrimination by a unitary system should meet the constitutional standards set forth in *Brown I* and subsequent Supreme Court cases commanding a racially nondiscriminatory school system. There is no question here of dual attendance zones or of a state imposed pattern of segregation.

The neighborhood school concept, as shown by expert testimony in the record, is a well-established and acceptable means of providing a proper educational program in all sections of the country for people of all nationalities and races. President Nixon in a recent public statement has said neighborhood schools "will be deemed the most appropriate base" for an acceptable school system, and "transportation of pupils beyond normal geographical school zones for the purpose of achieving racial balance will not be required."[1]

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[1] The Gallup poll published in many papers on April 5, 1970, includes the following conclusions:

> "By the lopsided margin of eight to one, parents vote in opposition to busing, which has been proposed as a means of achieving racial balance in the nation's classrooms.
>
> "Opposition to busing arises not from racial animosity but from the belief that children should attend neighborhood schools and that busing would mean higher taxes. This is seen from a comparison of attitudes on busing with those on mixed schools.
>
> * * * *
>
> "When Negro parents are asked the same series of questions, the weight of sentiment is found to be against busing."

The basic issue presented on this appeal appears to be whether upon the facts disclosed by the record a fairly established geographical zoning system for neighborhood schools must be abolished in order to attain racial balance and if so, whether such balance in each school must closely approach the percentage of each race in the district.

It would appear from the record before us that such racial balance could only be accomplished by pairing white and Negro districts, a considerable distance from each other. On this issue, Judge Young states:

> "[T]he plaintiffs attack the neighborhood school principle, saying it has no validity and that the geographic attendance zones should run lengthwise the District. This, as they admit, would involve compulsory transportation of students by bus for distances at least six to eight miles. This is so because the schools in the central part of the City, including Central High, are largely integrated, and the great disparity between the races exists in the extreme eastern and western parts Therefore, transportation of pupils would consist largely of transportation from the extreme east-to-west and vice versa, traversing the crowded traffic conditions of the middle section, including the downtown district. Thus, high school pupils from Horace Mann in the east would have to be transported past Central to Hall High in the west, or vice versa. The same would be true in a lesser degree with the junior high and elementary schools."

The District Courts and the Courts of Appeals are divided upon the constitutional validity of retaining geographical school zones fairly drawn without discrimination. Such issue can only be authoritatively answered by the Supreme Court. While broad language in some of the Court's opinions could arguably be subject to an interpretation that some degree of racial balance is required,

it is our view that the Supreme Court has not decided this issue. See Chief Justice Burger's concurring opinion in *Northcross v. Board of Education*, ... U. S. ... (March 9, 1970).

The exhibits in the record reflect that in northern states as well as in the south, the Negro population is frequently concentrated in certain geographical areas and that as a result in many northern metropolitan areas some neighborhood schools serve predominantly only Negro students. Absent state law forcing segregation, as is the situation here, we see no racial discrimination or violation of equal protection. The Constitution should be applied uniformly in all sections of this country.

The approved plan has been in operation only a short time. Particularly in light of the freedom of choice option superimposed upon the geographical zoning, no reliable prediction can be made as to the effect of the plan on desegregation.

Moreover, any resident of a geographical school zone is entitled to attend the school serving his zone regardless of race. Federal law now prohibits racial discrimination in the sale of homes. It is quite possible that acquisition of homes by Negroes in predominantly white zones will promote racial balance in the schools. The approved teacher desegregation plan should also produce more racial balance.

The busing issue is subsidiary to the neighborhood school issue. Busing is of course, frequently provided to transport pupils living at a substantial distance from the schools, particularly in sparsely settled areas. Here a neighborhood school is at hand. Judge Young states that the evidence shows that the annual cost of busing in event of the proposed pairing of districts is $500,000, which apparently is exclusive of required capital expenditure. The

busing issue presents the additional problem of whether such a substantial outlay could not be better used for educational purposes.

Absent authoritative guide lines from the Supreme Court as to the constitutional status of neighborhood schools in metropolitan districts, the Board upon remand would be at a loss to know what course to take in devising a desegregation plan. The remand for the proposal and consideration of a new plan for desegregation, absent more specific guide lines, would only create confusion and lack of stability in the Little Rock school system.

We would affirm the order and judgment of the trial court in its entirety.

A true copy.

Attest:

Clerk, U. S. Court of Appeals, Eighth Circuit.

APPENDIX B

United States Court of Appeals
for the Eighth Circuit

September Term, 1969

No. 19,795

Delores Clark, et al.,
Appellants,
vs.

The Board of Education of the Little Rock School District, et al.,
Appellees.

No. 19,810

Delores Clark, et al.,
Appellees,
vs.

The Board of Education of the Little Rock School District, et al.,
Appellants.

Appeals from the United States District Court for the Eastern District of Arkansas.

Judgment

(Filed May 13, 1970)

These Causes came on to be heard on the joint appendix and briefs and was argued by counsel for the respective parties.

On Consideration Whereof, it is now here ordered and adjudged by this Court that these causes be, and the same are hereby, remanded to the said District Court with directions consistent with the majority opinion of this Court this day filed herein.

And it is further ordered by this Court that the Mandate in these causes issue forthwith to the said District Court, and Mandate will not be stayed pending petitions for rehearing or certiorari.

APPENDIX C

In the United States District Court
Eastern District of Arkansas
Western Division

Delores Clark, et al.,
Plaintiffs,
v.
The Board of Education of the Little Rock School District, et al.,
Yolanda G. Townsend, a Minor, et al.,
Plaintiff-Intervenors,
Little Rock Classroom Teachers Association,
Intervenors.
No. LR-64-C-155.

Memorandum Opinion

(Filed May 8, 1969)

History of This Case.

On November 4, 1964, five Negro children, joined by their parents, filed their complaint in this case, seeking to enjoin the Little Rock School Board from refusing them admission to certain Little Rock schools because of their race. Aside from the inability of these children to attend the schools of their choice, the principal attack in the complaint was directed against the Little Rock Board's use of the Arkansas Pupil Assignment Law. The plaintiffs urged in their complaint that attendance zones be created by the Board on a non-racial basis.

On April 23, 1965, the Board filed a "Supplemental Report," requesting the abandonment of the Board's use of

the Arkansas Pupil Assignment Plan and the adoption of a "Freedom of Choice" plan.

The plaintiffs, in their memorandum brief filed February 4, 1965, stated that (quoting *Northcross v. Board of Education,* 302 F. 2d 818, 823):

> "Minimal requirements for non-racial schools are geographic zoning, according to the capacity and facility of the buildings and admission to a school according to residence as a matter of right."

In plaintiffs' response to the Board's motion to proceed under the freedom of choice plan, plaintiffs again asked that the Court require the Board to generally reassign all pupils to geographic attendance areas.

On January 14, 1966, the Court filed a memorandum opinion approving the freedom of choice plan proposed by the Board.

Plaintiffs then appealed to the United States Court of Appeals for the Eighth Circuit, which affirmed the freedom of choice plan, with a minor modification as to sufficiency of notice to be given to pupils and their parents, and with the further requirement that the Board take more positive and definitive action in regard to desegregation of faculty and staff. *Clark v. Board of Education of Little Rock School Dist.,* 369 F. 2d 661 (8 Cir. 1966).

On June 25, 1968, plaintiffs filed a motion for further relief, asking, among other things, that the Board be required to submit a plan for the assignment of all students upon the basis of a unitary system of non-racial geographic attendance zones, or a plan for the consolidation of grades or schools or both. Several parties sought leave to intervene in the action. One group was permitted to intervene as additional parties plaintiff; the Little Rock Classroom Teachers Association was also

permitted to intervene, although it took no active part in the proceedings; the other motions for leave to intervene were denied.

On July 17, 1968, the Board filed its answer to the motion for further relief. Essentially, it stated that after the United States Supreme Court decisions in the *Greene, Raney* and *Monroe* cases (May 27, 1968) the School Board had appointed a committee to determine what feasible changes and alternatives to the desegregation procedures of the District were available—that this committee had met several times, but before it could conclude its work plaintiffs' motion was filed.

It stated that the committee would continue its work, and expressed the commitment of the Board to proceed affirmatively in good faith, etc.

On July 18, 1968, the Court wrote a letter to counsel for the School Board, as follows:

> "I consider the answer of the defendants to the motion for further relief as essentially meaningless and an evasion of the Board's responsibilities under the law.
>
> "A hearing on the motion for further relief is set for Thursday, August 15, at 9:30 a. m.
>
> "Because of the short time between now and the new school year, I suggest that the Board and its staff immediately begin the formulation of a plan for the division of the school system into compulsory attendance areas and the re-assignment of the faculty to each school in accordance with the ratio between the races in the system.
>
> "This letter shall be made a part of the record."

A hearing was held on the motion and answer on August 15 and 16, 1968. At the conclusion of the second

day, plaintiffs' counsel moved to adjourn the hearing to permit the defendant Board to submit a revised plan.

As required by the Court, the defendant Board filed its report and revised plan on November 15, 1968. The case was set for trial on December 19, and testimony was heard for three more days—December 19, 20 and 24, 1968.

This memorandum opinion is based on the pleadings and the hearings held on those dates.

The Proposed Plan of the Little Rock School Board Filed November 15, 1969

The proposed plan is in the form of a resolution adopted by the Board of Directors of the Little Rock School Board on November 15, 1969. It is as follows:

> "Be It Resolved by the Board of Directors of the Little Rock School District of Pulaski County, Arkansas:
>
> "That the following desegregation plan for the Little Rock School District for the 1969-70 school year be adopted and presented to the Honorable Gordon Young, U. S. District Judge, pursuant to his Order of August 16, 1968, entered in the case of Delores Clark, et al., v. Board of Education of Little Rock School District, et al."
>
> "A. Faculty
>
> "The Little Rock Public Schools will assign and reassign teachers for the 1969-70 school year to achieve the following:
>
> "1. The number of Negro teachers within each school of the district will range from a minimum of 15% to a maximum of 45%.
>
> "2. The number of white teachers within each school of the district will range from a minimum of 55% to a maximum of 85%.

"B. Students

"The Little Rock School District will be divided into geographic attendance zones for elementary, junior high, and senior high schools as indicated on the accompanying map. All students residing in the designated zones will attend the appropriate school in that zone with the following exceptions:

"1. The Metropolitan Vocational-Technical High School will serve students from the entire district. Students will indicate their desire to attend Metropolitan before May 1, 1969. Actual assignments will be determined from objective test results on one or more vocational-technical aptitude inventories.

"2. All teachers, who desire to do so, may enroll their children in the schools where they are assigned to teach.

"3. All students presently in the 8th, 10th, and 11th grades will be required to choose between the school that they now attend or the appropriate school located in the zone of residence for the 1969-70 school year."

Description of the Little Rock School District

The Little Rock School District is semi-rectangular geographically, running from east to west. Its border on the north is the Arkansas River, which separates Little Rock from North Little Rock. On the south side lies what is called the Fourche River bottoms. This is a low area and not suitable for the erection of homes. It is, therefore, an effective barrier to expansion of the District southward until the western part of the school area is approached. The eastern part is commercial and industrial in nature. Thus, the District is narrow north and south until the western end of the District is approached, where the Arkansas River makes a northwesterly turn, and the end of the Fourche bottom area is reached. This

extreme western area and the southwestern area furnish the only basis for expansion of the City and the School District, and it is these areas where nearly all residential construction has occurred for a number of years.

The center of the District, including the Main Street of Little Rock and the streets adjacent thereto, were formerly occupied by higher income citizens, mostly white. In the last few years a great many of them have moved to the western part of the City and District, and Negroes have moved to the center of the City to occupy these vacated homes.

In Superintendent Floyd W. Parsons' Desegregation Report, Df. Ex. 10, he states, pp. 4 and 5, that housing patterns in the City are largely segregated. There has been some infiltration by Negroes into the historically identified white sections. Once this infiltration begins, the section tends to move rapidly to all-Negro. This has created several pockets of Negro residents surrounded by white neighborhoods. He said also that the sections identified as all-Negro are actually not all-Negro. An insignificant number of white families "dot" every Negro section of the City. On page 5 of the report it is said that most of the school buildings in Little Rock were constructed with a view to perpetuating segregation rather than implementing desegregation. "This means that a Negro community has a school so located in relation to it that it is 'sensible' for children in *that* community to attend *that* school. The same is true for the white community." On the other hand, Parsons testified at the hearing (Tr. 444), "No, we have not built any building for the purpose of perpetuating segregation."

To illustrate generally this population makeup, the location of the four general high schools[1] is illuminating.

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[1] This does not include Metropolitan High, a specialized vocational school, which for years has served the entire District. There is no segregation problem relating to this school.

The most eastern high school is Horace Mann, which is all-Negro. In the middle of the City is Central High, which in the school year 1968-69 had 1,542 white students and 522 Negroes. At the same time, Hall High, in the western part of the District, had 1,461 white pupils and 4 Negroes. The fourth high school, Parkview, in the southwestern part, had 46 Negroes and 519 whites (Df. Ex. 25). Parkview is not as yet a true high school. It consists of grades 8, 9, and 10 in 1968-69; and will serve grades 9, 10, and 11 in 1969-70. Similar patterns are reflected in the junior high and elementary schools—heavily Negro in the eastern part of the District, a mixture in the central portion, and heavily white in the western part of the District.

The scholastic population of the District, using the latest figures available as reflected by District assignments in July 1968, is 23,113. Of these, 15,063 (65.2%) are white, and 8,050 (34.8%) are Negro (Df. Ex. 6, p. 5).

As of July 1968 (page 7 of the same Exhibit) it is indicated that for the year 1968-69 a total of 1,398 Negro students would attend formerly all or predominantly white schools; in the elementary schools, 956 Negro students would do so, making a total of Negroes attending formerly all or predominantly white schools of 2,354.

Developments Since the Decision by the Court of Appeals for the Eighth Circuit in This Case December 15, 1966. Clark v. Board of Education of Little Rock School Dist., Supra

The Little Rock School Board, on August 29, 1966, approximately four months before the Court of Appeals decision, entered into an employment agreement with a team of experts from Oregon to make a study and offer recommendations as to a satisfactory desegregation plan to be used in the Little Rock School System. The cost was approximately $25,000. That group filed its report

of 203 pages with the Board in May 1967, and throughout the hearing is referred to as the "Oregon Report" (Df. Ex. 7).

Briefly, this report recommended a so-called educational park system, including the creation of one senior high school for the entire District, involving some 5,000 or more students, the pairing of Mann with Metropolitan High School, the closing of a number of older schools and the construction of several new ones. The price tag to implement the report was estimated to be in excess of ten million dollars.

The Little Rock School Superintendent, Mr. Parsons, criticized the report because it required the development of an extensive system of transportation and the complete abandonment of the neighborhood school concept. He considered the ten million dollar cost figure to be extremely conservative, and thought that implementation of the report would cost considerably more.

On August 31, 1967, the School Board directed Superintendent Parsons to prepare a long range plan for desegregation for the Little Rock School District and to submit the plan not later than January 25, 1968. It appears in the record as Defendants' Exhibit 10.

Mr. Parsons' plan would have desegregated the senior high schools through so-called strip zoning from east to west; closed down Horace Mann, the all-Negro school on the east side; and built additions to Parkview and Hall in order to achieve a reasonable racial ratio in those high schools.

Mr. Parsons also recommended the creation of what he called the Alpha Complex, which would have involved the closing of four grammar school buildings on the east side of Main Street, and which would have resulted in the creation of a reasonable racial ratio at the elementary level in this section. He also recommended the creation

of the so-called Beta Complex which involved the Garland, Lee, Stephens, Franklin and Oakhurst Schools, making a complex out of these five schools, because one of these schools (Stephens) was all-Negro, and the others were predominantly white. By pairing or consolidating these schools a reasonable racial balance would be achieved in this particular area in the central portion of the District.

His report did not attempt to deal with the junior high problem because he stated that "a solution for this at that time escaped us, and I am not sure but that it still escapes us."

The Board adopted the proposal and called for a bond issue for something in excess of five million dollars to implement the plan and proposed a millage rate of 50 mills. The election was in March, 1968, and the voters rejected the millage increase. Some of the school directors who had voted for adoption of the Parsons Report were defeated. All parties concede that the negative vote at this election was in effect a defeat of the Parsons Plan, which was the primary issue at the election. A similar fate had already befallen the Oregon Plan.

The Zoning Plan Filed by the Board November 15, 1968

At the December hearings Parsons testified that the only feasible alternative to the present freedom of choice procedure is geographic attendance zones. Defendants' Exhibit 22 is a map showing high school, junior high school, and elementary attendance zones the School Board proposes.

In discussing Defendants' Exhibit 22 Parsons said there are exceptions to certain students residing in these zones. One is that Metropolitan Technical High serves the whole District; the second is that since there would be a decided increase in faculty desegregation that all teachers desiring to do so may enroll their children in the school or schools where those teachers are assigned to teach. This

would assist in assigning teachers and in recruiting teachers.

Another exception was that all students presently in the eighth grade in junior high school level and all students who are presently in the tenth and eleventh grades in senior high school level would be given a choice to either attend the appropriate school in the geographic zone where they reside or continue to attend the school where they are currently enrolled.

The reason for these last exceptions—that is, in the junior and senior high—is that the pupils in the 11th grade, for example, have related themselves to co-curricular and extra-curricular activities. The 11th grade students have probably already ordered their invitations and rings. There are pupils in the 10th grade who have been elected to the pep clubs, are playing in the band, or participating in athletics, and Mr. Parsons feels that they have a pre-emptive right to remain in that school if they desire to do so until graduation.

At the junior high level the 7th grade student has related himself somewhat to the school, but he has not done so as effectively as has the 8th grade student. Consequently, he feels that the 8th grade student at the junior high school level should be permitted to finish the 9th grade at that junior high school.

In explanation of the plan presented November 15, Parsons said he knows of no plan that could be put into operation within the reasonably near future that would not involve an expenditure of money, other than a neighborhood geographic zoning plan which would actually make a more effective and more efficient use of existing facilities and could be administered in a more effective and impartial manner. It involves a neighborhood school concept which gives a closer relationship between the parents and patrons of any school.

The Little Rock System, he said, is presently operating under the most restrictive current operating budget that has been experienced in the last seven years. The District has no available funds for additional expenses. It has a contingency fund in next year's budget of $135,000. Normally the Board tries to carry a contingency fund of 2½% of the total budget—$135,000 is slightly less than 1%.

Mr. Parsons referred to Mr. Walker's estimate of the cost of $500,000[2] for transportation, and Mr. Parsons said that there is no way in the world to squeeze the Little Rock School District's budget and get that much left over.

The Faculty.

The School District's desegregation proposal as relating to the faculty is set forth in Defendants' Exhibit 23. 18% of the total high school faculty is Negro and 82% white; 27% of the junior high school faculty is Negro and 73% white; and at the elementary level 35% is Negro and 65% white. Under the plan for the future as shown on Defendants' Exhibit 24 the actual number of white and Negro teachers and the number of transfers involved in order to achieve the objectives sought is shown. There is a variation, but in no case is there less than 15% nor more than 45% of each faculty Negro. There is a minimum of 55% of each faculty white, and a maximum of 85%.

The School Staff.

There are seven members of the Little Rock School Board. Mr. T. E. Patterson, one of the members is a Negro; the other six members are white.

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[2] Since this is stated to be an *annual* cost, it apparently does not include the initial capital investment in the buses that would be needed.

The Superintendent, Mr. Parsons, is white, as is the Deputy Superintendent, Mr. Fair. The Assistant Superintendent in Charge of Instruction, Mr. Fortenberry, is white, as is the Assistant Superintendent in Charge of Business Affairs, and Assistant Superintendent in Charge of Research and Pupil Personnel. The Assistant Superintendent in Charge of Personnel is Mr. Fowler, a Negro. Mr. Fowler's primary responsibility concerns the actual employment of and assignment of principals and other members of all personnel who are to be employed by the school system.

Mr. Winslow Drummond, one of the members of the Board, and Mr. Patterson, the Negro member, voted against the plan submitted to the Court. Mr. Drummond testified that the primary reason he voted against it was because the Board had asked the Superintendent at its September meeting to draw a plan within certain policy guidelines, which Parsons submitted to the Board October 10. Certain changes were made in the plan by the Board before it was submitted to the Court, and Drummond felt that Mr. Parsons' plan as of October 10 should have been adopted by the Board. His reasons, in some detail, were a part of a prepared statement which is included in Defendants' Exhibit 27 as a part of the minutes of the meeting of November 15. Actually, he said, the only difference of any importance between the two plans is that the tentative proposal by Mr. Parsons of October 10 would have included 80 pupils in Hall High.

Mr. Drummond does think that the Beta Complex is still a feasible plan for further implementation of desegregation in the District.

He agreed that there were no surplus funds in the operating budget.

The change in the Hall High boundary line proposed by Mr. Parsons October 10 and which was the principal

reason for Mr. Drummond's opposition to the adopted plan of November 15, is shown on Defendants' Exhibit 28. The change is in the southeast area of the Hall High zone, and this line would have extended it farther southeast, within a few blocks of Central High, picking up 76 Negro students, making a total of 80.

Testimony by the Experts.

As might be expected, testimony of the experts corresponded generally with the views of the parties who called them to testify.

The School Board called Dr. E. C. Stimbert, Superintendent of Schools of the Memphis, Tennessee City System. He has an extensive educational background. For the last 22 years he has been with the Memphis School System; the last 11 years as Superintendent of that system, and has 125,000 students, about 50% Negro. The Memphis system of assigning students is based on the neighborhood school concept.

Professionally he differs from the proposal of Dr. Goldhammer to abandon the neighborhood school system in Little Rock in favor of the educational park concept. He knows of no public school system in the nation that has converted its entire system to an educational park operation, although some are talking about experimenting with it.

He thinks the involvement of the parents in the neighborhood schools is a definite asset to the schools involved. More support is received from parents through P. T. A. and other school programs.

If a child is transported to some distance away from home there is an element of time in addition to the expense. There is a lack of interest on the part of the home in that school which is more remote from the neighborhood in which the child resides. In the case of very

young children who quite often get sick at school, in the neighborhood concept the school is close to the home of the child and it is easy to get in touch with the parents or neighbors.

The American Association of School Administrators, of which he is a member, made a study of this problem, and at the conclusion of the study there was full agreement on the neighborhood school philosophy as far as the administrative unit for achieving optimum educational results.

He has examined the faculty desegregation plan that Mr. Parsons presented to the Court. In his opinion it is a tremendously ambitious program. He knows of no school system in the United States that has desegregated the faculties in the manner he is proposing for the coming year, 1969.

In his opinion, after studying the various plans summitted to the Court here, he knows of no plan other than geographical attendance zones that would be educationally sound or administratively feasible.

The plaintiffs called Dr. Keith Goldhammer, Dean of the School of Education, Oregon State University. He has a Ph. D. degree from that institution. He has had extensive experience and was one of the research team which made the so-called Oregon Report in Little Rock. He is the author of publications. In Little Rock his primary responsibility was to undertake the direction and supervision of the field work.

His basic point of disagreement with Mr. Parsons is the disagreement over the continuation of the neighborhood school concept. He said that is not an educational concept, but an administrative concept—there is nothing to lose educationally by abolishing the neighborhood school concept. He does not think the geographic attendance area plan prepared by the District is one to

accomplish desegregation. He does not think it would improve upon the present freedom of choice system. He suggests pairing of certain schools, which would require some busing at the District's expense.

Dr. Goldhammer resumed his testimony on December 24, after the recess from August. He said that as far as faculty desegregation is concerned the Board's plan seemed to be a feasible approach; although it does not do the entire job, if it is followed by action that would relieve any inequities that remained, complete faculty desegregation could be achieved.

He criticizes the situation in Hall High because of the few Negroes enrolled there.

He said that the Board has three plans that he has seen which are superior to the plan submitted to the Court under the Resolution of November 15. They are: the Oregon Report, Mr. Parsons' Plan, and the plan which became known as the Walker Plan (Walker is one of counsel for plaintiffs).

He doubts that the superimposing the Beta Complex upon the plan represented by Defendants' Exhibit 22 would be feasible because it would be doing the job in a section of the community without effect on the total community.

Although a member of the American Association of School Administrators, he is in disagreement with their support of the neighborhood school concept.

The plaintiffs also presented as an expert, Dr. Dan W. Dodson, whose credentials are impressive. He is chairman of the Department of Education of Sociology and Anthropology of the School of Education at New York University. He obtained his Ph. D. from that institution. He assisted the Washington, D. C. school board in 1953-54 in the desegregation of its schools. He designed a plan

for desegregation for the New Rochelle School System in the early 1960s, and served as a consultant in the study of the Englewood, New Jersey school system in the desegregation of that system. He made a study of the school system of Mount Vernon, New York and proposed a desegregation plan which the State Commissioner of Education has ordered to be put into effect. He also did a study of the Orange, New Jersey school system as a basis for the NAACP's suit against that district. He is the Dr. Dodson referred to in the Second Circuit Court of Appeals case involving New Rochelle.

He said that the neighborhood school concept never had any integrity in the educational literature until around 1920. It is now a place where people who are more privileged try to hide from the encounter with others. It has become an exclusive device. He would not describe the high schools shown on the map, Defendants' Exhibit 22, as neighborhood schools. No high school in the community, nor series of high schools, are neighborhood schools.

He said that reports he had studied showed that Negro youngsters in an integrated situation had done better than other Negro children, and white children have not fallen behind because of integration.

He does not think you can have an effective or meaningful integration, even though the faculty be integrated, without integration of its pupils.

He referred to the Englewood school system and White Plains. In White Plains, Negro children were sent by bus in a leapfrog operation beyond the desegregated school to the outlying schools where there were all-white, so that each school reflects between 10% and 30% Negro in a community that is about 24% Negro child population.

Pairing of schools has also been used widely.

Busing is a common practice in education in America.

Commenting on the so-called Parsons Plan in connection with high school desegregation, if desegregation is to be accomplished the zones would have been east and west rather than north and south.

His attention was called to the so-called Beta Complex, page 34, Defendants' Exhibit 10. He thinks this would be a rather imaginative approach to dealing with the problem.

When he was asked whether Defendants' Exhibit 22 reflected a non-racial system, his response was that it appeared to him to be a racist school system—it will result in the west end of town being white and the east end of town Negro, and the next step, if it follows the history of New York, would be that the frustrated blacks will demand "the separation into local control" and "they will want to take over the school system for themselves and press for apartheid education."

On cross-examination he stated that almost all the desegregation plans he had mentioned and that he had a part in formulating involved either the closing of a Negro school or providing transportation for the students, or both. These involved some expense.

He doesn't know how far students would have to be transported by bus if the high school zones on Defendants' Exhibit 22 had been drawn east to west, but he knew it would be several miles. When asked whether the Parsons Report and the exhibits in it reflect that Negro students living in the eastern section of the District if assigned to Hall High under an east-west zoning plan would be six, seven, or eight miles to go to get to Hall High, he said that he had noted that that figure had been "passed around".

He disagrees with certain statements published by the former president of Harvard University, Dr. James Bryant Conant, and also certain statements in a publication by the Honorable Hubert Humphrey, former Vice-President of the United States, published in 1964.

He knows of no other school district with as high a proportion of Negro students as in Little Rock District that has undertaken so massive a reassignment of teachers for the purpose of moving toward racial balance, as disclosed in the plan filed in this case.

He agrees that there is a good deal of diversity of professional opinion concerning the neighborhood school concept and the educational park concept. He would also agree that there are a great many professional educators with good credentials who would disagree with some of the ideas he has expressed in his testimony.

The Applicable Law.

The School Board has filed a plan involving compulsory geographic attendance zones on the part of the pupils, using the neighborhood school concept, although admittedly that concept has less applicability to high schools. On the other hand, the plaintiffs attack the neighborhood school principle, saying it has no validity and that the geographic attendance zones should run lengthwise the District. This, as they admit, would involve compulsory transportation of students by bus for distances at least of six to eight miles. This is so because the schools in the central part of the City, including Central High, are largely integrated, and the great disparity between the races exists in the extreme eastern and western parts. Therefore, transportation of pupils would consist largely of transportation from the extreme east-to-west and vice versa, traversing the crowded traffic conditions of the middle section, including the downtown business district.

Thus, high school pupils from Horace Mann in the east would have to be transported past Central to Hall High in the west, or vice versa. The same would be true in a lesser degree with the junior high and elementary schools.

At the present time the school District furnishes no transportation to any students. Although some students use public transportation (bus), this would not service a school system such as plaintiffs propose.

Thus, the central issue in this case raised by plaintiffs is whether or not the school District should be required to adopt geographical zones running from east to west, regardless of the expense to the District and the convenience of the pupils.

This Court's search of the authorities has not disclosed a case that has required compulsory bus transportation by the school system.

United States v. Jefferson County Board of Education, 372 F. 2d 836 (5 Cir. 1966), is one of the most widely cited cases by counsel for Negro plaintiffs in school cases. Its long opinion raised questions about the neighborhood school system, but said, at p. 879:

> "The neighborhood school system is rooted deeply in American culture. Whether its continued use is constitutional when it leads to grossly imbalanced schools is a question some day to be answered by the Supreme Court, *but that question is not present in any of the cases before this court.*" (Emphasis supplied.)

As to transportation of students, it simply says, p. 890:

> "If transportation is provided for white children, the schedules should be re-routed to provide for Negro children."

In the three Supreme Court cases decided May 27, 1968—*Greene* v. *County School Board,* 391 U. S. 430; *Raney v. Board of Education,* 391 U. S. 443; and *Monroe v. Board of Commissioners,* 391 U. S. 450—no reference is made to compulsory transportation of students. In *Greene,* p. 441, the Court said that instead of freedom of choice, the Board should consider "reasonably available other ways, such for illustration as zoning . . . ."

In *Raney,* at p. 448, the Court said:

> "The Board must be required to formulate a new plan and, in light of other courses which appear open to the Board, such as zoning, fashion steps . . . ."

In a case from the Fifth Circuit later than *Jefferson, supra, Broussard v. Houston Independent School District,* 395 F. 2d 817 (5 Cir. 1968), the court said, at p. 820:

> "Racial imbalance in a particular school does not, in itself, evidence a deprivation of constitutional rights. Zoning plans fairly arrived at have been consistently upheld, though racial imbalance might result." (Citing cases from the Fourth, the First, and the Tenth Circuits.)

However, in *Adams v. Matthews,* 403 F. 2d 181 (5 Cir. 1968), another panel of that Circuit said, p. 188:

> "If in a school district there are still all-Negro schools or only a small fraction of Negroes enrolled in white schools, or no substantial integration of faculties and school activities, then, as a matter of law the existing plan fails to meet the constitutional standards as established in Greene . . . One alternative to freedom of choice is the assignment of students on the basis of geographic attendance zones. In an attendance zone system (as in a freedom of choice system) the school authorities should consider the consolidation of cer-

tain schools, pairing of schools, and a majority-to-minority transfer policy as means to the end of disestablishing the dual system."

On rehearing the court said, p. 190, in suggesting certain measures to be considered:

"(a) Liberal majority-to-minority transfer policies, notwithstanding the existence of zones;

"(b) Principal, faculty, and staff desegregation; and

"(c) Desegregation of athletic activities . . ."

The most recent case of the Fifth Circuit that has been called to our attention by counsel for plaintiffs is *Henry v. The Clarksdale Municipal Separate School District,* ... F. 2d ... (March 6, 1969). The court criticized the geographical zoning plan of the board because the plan would only produce token desegregation. It said if there were still all-Negro schools or only a small fraction of Negroes enrolled in white schools or no substantial integration of faculties and school activities, then as a matter of law the existing plan fails to meet constitutional standards.

The court said that the board should consider redrawing its attendance zone boundaries, incorporating the majority-to-minority transfer provision in its plan, closing all Negro schools, consolidating and pairing schools, rotating principals, and taking "other" measures to overcome the defects of the present system.

In none of these cases from the Fifth Circuit, which admittedly has gone much further than any other circuit in discussing possible alternatives to freedom of choice, has the court suggested compulsory transportation of pupils by bus.

We can only surmise, but perhaps the omission in all of these cases of compulsory bus transportation may be

due, at least in part, to the national policy spelled out by Congress in the Civil Rights Act of 1964. Title IV of the Act confers authority on the Attorney General to initiate civil suits to "further the orderly achievement of desegregation in public education," subject to this provision:

> ". . . provided that nothing herein shall empower any official or court of the United States to issue any order seeking to achieve a racial balance in any school by requiring the transportation of pupils or students from one school to another or one school district to another in order to achieve such racial balance, or otherwise enlarge the existing power of the court to insure compliance with constitutional standards." 78 Stat. 248, 42 U. S. C. 2000c-6 (1964).

In *Clark, supra*, plaintiffs were seeking geographical attendance areas, and on p. 666 the Eighth Circuit characterized attendance areas as "this admittedly constitutional alternative."

The Court's Conclusions.

1. *The Board's Zoning Plan for Pupils.*

As shown by Defendants' Exhibit 22, the Board's plan for geographical attendance zones, assuming the legality of the neighborhood school concept, seems fairly and equitably drawn. There is no indication of gerrymandering. It will be approved, with the following exceptions:

(a) *The Hall Boundary Line*

Mr. Parsons suggested in his report to the Board dated October 10 that the south line of Hall be extended eastward to a point not far from Central High, the purpose being to include 80 Negro students in Hall rather than the four who would be included under the District's Plan, Exhibit 22. This proposed extension of the south line of

Hall eastward is shown on Defendants' Exhibit 28. The southeast line of Hall will be modified according to Defendants' Exhibit 28. To pinpoint this issue for the benefit of counsel and the Court of Appeals, this change from the Board's Plan is gerrymandering pure and simple, but it is justified, we think, to increase integration, which is almost non-existent in Hall.

(b) *The Beta Complex*

There are five elementary schools near the center of the system: Franklin, Garland, Oakhurst, Stephens, and Lee. They are close enough together to permit their consolidation of pairing. The disparity of integration in these schools under the proposed zoning plan contrasted with the so-called Beta Complex Plan is shown on the table on page 1 of Court Exhibit 1:

Elementary School	Zoning Plan		Beta Complex	
	Negro	White	Negro	White
			Primary	
Franklin	61	526	170	403
Garland	62	260	114	269
			Intermediate	
Oakhurst	24	330	104	286
Stephens	313	34	144	396
			Special Educ.	
Lee	70	219	30	40
Totals	530	1,369	562	1,394
Grand Total	1,899		1,956	

Dr. Dodson characterized the Beta Complex as an imaginative approach to solving the integration problem of these particular schools. We realize that Dr. Goldhammer, as well as Mr. Parsons, criticized the adoption of the Beta Complex unless similar adjustments were made throughout the system. As best the Court can tell,

this opposition is primarily due to the fact that these witnesses feel that the patrons of these particular schools will feel that they have been unduly singled out in contrast to the other schools in the system. The Court does not feel that these reasons are sufficient to prevent a solution to the problem in these five schools as shown by the tables above, and the Court will hold that the so-called Beta Complex involving these elementary schools must be implemented.

We realize, however, that some capital expenditures will be involved, and it is perhaps too late, both for the capital improvements to be made and the necessary administrative procedures to be accomplished by September of 1969, and we hold that the Beta Plan need not be put into effect until September 1970.

(c) *Transfers From Schools Where Student's Race is in the Majority to Schools Where His Race is in the Minority.*

The Board's Plan will be further modified by retention of freedom of choice for any Negro or white student to transfer from a school in which his race is in the majority to a school in which his race is in the minority. Such transfers are to be subject to the usual provisions as to overcrowding, etc.

This will permit Negro students who otherwise would be locked into predominantly Negro schools by attendance zoning to transfer to predominantly white schools. White students are given the same privilege. That such provisions are valid is well established by the cases.

There are other minor exceptions to the geographical zoning, that are mentioned in the Board's Plan.

Teachers' Children.

Under the faculty plan a good many teachers will be transferred from the schools in which they now teach. The plan provides that teachers who desire to do so may enroll their children in the schools where they (the teachers) are assigned. This will affect a small number of students and may aid the school staff in securing the cooperation of the teachers to accept new posts. We approve it.

Students Presently in Eighth, Tenth, and Eleventh Grades.

We think this is reasonable and will cause less disruption among the students who are approaching the end of their junior and senior high school years. This is a temporary situation and will only last two years until the tenth grade pupils graduate. We think it is a reasonable exception, and approve it.

2. *Faculty and Staff.*

The Board has made substantial advances in the integration of its faculty and staff since the opinin of the Court of Appeals in *Clark*. Much more progresshas been made in staff integration than indicated abov in this opinion where reference was made to personnel ssociated with the Superintendent and his assistants.

The proposal of the Board made at the suggeston of the Court means that no school in the District will have an all-Negro nor an all-white faculty. The number f Negro teachers within each school will range from a miimum of 15% to a maximum of 45%. The number of white teachers within each school will range from a minimum of 55% to a maximum of 85%.

The Court has no hesitancy in approving hat plan. The experts, Drs. Dodson, Goldhammer and Stinbert, all

agreed that it was a most ambitious program to be accomplished in one year, and one or more of them expressed some concern about the District's ability to implement it. Superintendent Parsons, however, firmly expressed his conviction that it would be implemented by September, and we have no reason to doubt his intentions in that regard.

Comparison of Integration Under Freedom of Choice and Zoning

The Court requested counsel for the School Board to submit tables showing the number of Negro students attending formerly all-white schools and white students who would attend formerly all-Negro schools under the proposed zoning plan in contrast to the number of pupils in the same categories in the last few years under freedom of choice. This appears in the record as Court Exhibit 2.

The figures in the before and after columns show that as of July 1968 there were 1,398 Negro students assigned to formerly all-white schools as contrasted to 1,133 under the Board's Plan for geographical zoning to go into effect in September 1969. These totals are not strictly comparable because the July 1968 column shows 131 Negro students in Metropolitan (the technical high school), and the ~~total~~ for September 1969 under zoning omits any Negro students who would attend Metropolitan. Why the Exhibit was prepared in this manner we do not know—but, as stated above, Metropolitan serves the entire District, and as Footnote C reflects, the Board anticipates that a number of Negroes will attend Metropolitan under the zoning plan.

Up to the present time no white students have chosen to attend any formerly all-Negro schools. The Board Exhibit reflects that it expects 182 white students to be in that category this coming September.

Elementary Schools

The number of Negroes assigned to formerly all-white schools under freedom of choice in 1968 was 956, with no whites attending formerly all-Negro schools. Under the proposed zoning plan there would be 1,176 Negro students attending formerly all-white schools, and 199 white students in formerly all-Negro schools. These figures do not take into consideration the implementation of the Beta Complex.

The total number of Negro pupils attending all-white schools in 1968 was 2,354, and under the zoning plan it is anticipated that the total Negroes attending formerly all-white schools (again omitting Negroes attending Metropolitan High, but which were included in the 2,354 figure) will be 2,309, and 381 white students will attend formerly predominantly Negro schools, making a total number of pupils attending schools in which their race is in the minority 2,690.

While we are sure these figures are accurate as far as the experience for 1968, and the location of pupils by race in the attendance zones plan, these figures do not accurately depict what will occur under the zoning plan. In the first place, they do not take into consideration the Court's modification of the plan so as to permit any Negro child wherever he lives in the District the choice to transfer to a school in which his race is in the minority. How many that will be it is impossible to foretell, except that on the basis of past experience it should be a considerable number (2,354 in 1968, although that figure probably includes some Negroes who reside in zones where their race is in the minority and who would be ineligible to exercise the majority-to-minority transfer choice). The withholding of application of the zoning plan to pupils in grades 8, 10, and 11, as well as the expiration of this exemption, also will have an influence on the figures, al-

though it is impossible to be definite as to their number. The number of white students who are required to attend formerly all-Negro schools is, of course, a net gain of the mixture of races in the school system.

Construction of Schools

We realize that some of the cases make a distinction between school integration that originated de jure as contrasted to that which came about and exists de facto. The parents of school children do not move where schools are—schools are constructed where the children are or expected to be. Nearly every school district as large as Little Rock employs experts who study the trends which indicate where the population will be five and even ten years from the time of construction of the schools. What has happened in Little Rock is no different than that which has happened in the northern and other sections of this country where there was never any de jure segregation. The growth of the City and the construction of new homes had to be in the west and southwesterly portions of the District. If new schools should be built where the pupils are or will be, the construction of new schools had to be in the same sections of the District.

As Dr. Dodson said, he has noticed no difference in the growth patterns where segregation was de jure or those sections of the country where it was de facto. In all comparable cities the same movement has occurred—the white people, particularly the ones with higher incomes, have moved into the suburbs, most of the Negroes have remained where they were or have moved into the central part of the city, in many cases occupying the homes which the whites have vacated.

We have no doubt that the growth of Little Rock and its School District would have been the same without regard to so-called de facto or de jure segregation.

If the concept of neighborhood geographical zoning is legal, we see no reason why this Court should attempt to supervise the construction of new schools or the alteration or addition to older schools, because the population demands will inexorably dictate the location and construction of schools. Of course, if the Board deviated from this policy in such a way as to impede desegregation, application for relief could always be made to this Court.

Attorneys' Fees

The Court realizes that the Court of Appeals has suggested that the District Courts assess substantial attorneys' fees in favor of plaintiffs in cases of this type where such fees are warranted by the circumstances.

In their brief the plaintiffs have listed a great many hours said to have been devoted to preparation for trial, although there is no breakdown among the different phases of the case.

After the Eighth Circuit's decision in *Clark* in December 1966 the Board immediately complied with its directive as to notice to the pupils under the freedom of choice plan. Plaintiffs' counsel so stipulated during this hearing. Of course, the rate of progress of desegregation of faculty and staff may be a matter of opinion, although considerable progress was made. As of May 27, 1968, the date of the three Supreme Court cases, the Little Rock School Board was operating a freedom of choice system which had been declared legal by the Eighth Circuit. The petition for further relief of plaintiffs forming the basis of this phase of the litigation was filed June 25, 1968, less than one month after the date of the opinions of the Supreme Court in the three cases. If a reasonable allowance is made for receiving copies of those Supreme Court

opinions, study of them by counsel, and counsel's conferring with the School Board, it seems impractical, if not almost impossible, for the Board to have made a revision in its desegregation policies by the time that plaintiffs' petition was filed on June 25.

It is true that the response filed by the Board contained no affirmative statements except an affirmation of good faith and the fact that a committee had been appointed to reappraise the Board's policies, but such committee had not completed its work. It was in response to that answer that the Court wrote a letter to counsel suggesting the filing of a geographic zoning plan for the pupils and a redistribution of the faculty in each school in accordance as near as possible with the ratio of the races of the pupils in the District.

The Board filed a plan embodying the suggestions made in the Court's letter. Since that time this lawsuit has largely consisted of a vigorous attack by the plaintiffs on the neighborhood zoning plan filed by the Board, and they have insisted that the Board adopt either the Oregon or Parsons Plan, both of which would require compulsory transportation of pupils by bus. The Court has no doubt that nearly all of the hours which plaintiffs list have been in connection with this issue which the Court has found against the plaintiffs.

The Court realizes, as was stated in *Clark*, that the past history of the Board (which, of course, includes many members who no longer are serving) has been one of intransigence—but under the circumstances here, and considering the outcome of this case, the Court cannot say that since the Court of Appeals opinion in 1966 the Board has exhibited bad faith—and for that reason attorneys' fees are denied.

Addendum

There was another group of schools suggested for pairing or consolidation in the eastern part of the District, known as the Alpha Complex. The facts in the record as to that group of schools are not sufficient for the Court to make a finding or issue a directive as it has done in the Beta Complex.

The Court is aware that this case will be appealed to the Court of Appeals, if not to the Supreme Court. Were that not true, the Court would presently order that further information be furnished the Court in connection with the Alpha Complex, and, if necessary, a hearing be held in connection with those elementary schools. The Court does not believe that it would serve any useful purpose to do so now—but unless appellate courts decide otherwise, the Court will, as soon as it is feasible, pursue the possibility of further integration in that area.

Jurisdiction of this cause will be retained.

Dated: May 8, 1969.

Gordon E. Young
United States District Judge

APPENDIX D

In the United States District Court
Eastern District of Arkansas
Western Division

Delores Clark, et al.,
Plaintiffs,

v.

The Board of Education of the Little Rock School District, et al.,
Defendants,

Yolanda G. Townsend, a Minor, et al.,
Plaintiff-Intervenors,

Little Rock Classroom Teachers Association,
Intervenors.

No. LR-64-C-155.

Decree

(Filed May 16, 1969)

Pursuant to Memorandum Opinion entered May 8, 1969, it is by the Court Considered, Ordered, Adjudged and Decreed:

1. The defendants' student assignment plan based on the zones reflected in defendants' Exhibit 22 is approved with the following exceptions:

(a) The defendants are directed to redraw the southeast zone boundary of Hall High School so as to place not less than 80 Negro high school students within that zone.

(b) The so-called "Beta Complex" as described in the Court's opinion shall be implemented by the Board for the school term beginning in September 1970.

(c) Defendants are directed to provide an opportunity for any student, white or Negro, to transfer from a school where his race is in the majority to a school where his race is in the minority where space is available. Adequate notice of such opportunity to transfer shall be given to the students by the defendants.

2. The special provisions mentioned in the opinion relating to children of teachers, and students presently in the 8th, 10th and 11th grades are approved.

3. Defendants' plan for faculty desegregation is approved.

4. Plaintiffs' application for allowance of attorneys' fees is denied.

5. Not later than 10 days before the commencement of the school term in September 1970 the defendants shall file a report with the Court which shall contain information as to the progress of faculty desegregation and the implementation of the "Beta Complex".

6. If it becomes necessary for defendants to adjust any of the zone boundaries to better distribute the students among the schools prior to September 1970, they will promptly file and serve on counsel for plaintiffs a description of all such changes, together with reasons they were deemed necessary.

7. The Court retains jurisdiction of the cause for all appropriate purposes.

Dated: May 16, 1969.

/s/ Gordon E. Young
United States District Judge